

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: November 22, 2006

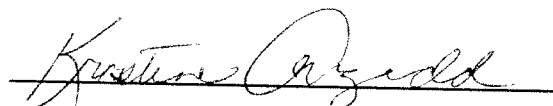
From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

Subject : Regulation 1586, *Works of Art and Museum Pieces for Public Display*
Chief Counsel's Rulemaking Calendar
Board Meeting—December 12, 2006

Assembly Bill 2533 (Ch. 281, Stat. of 2006) amended Revenue and Taxation Code (RTC) section 6365 to expand the exemption for original works of art to include those leased from one nonprofit organization to another nonprofit organization for 35 years or more. Another amendment to RTC section 6365 clarifies that items of clothing or personal adornment may be original works of art. To incorporate the provisions of the new statute, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1586 on the Chief Counsel's Rulemaking Calendar on December 12, 2006, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. This change is appropriate for processing under Rule 100 because it makes the regulation consistent with a statutory change.

Attached is the strikeout and underlined version of the regulation. If you have any questions regarding this request, please let me know or contact Ms. Lisa Andrews at 322-5989.

Recommendation by:



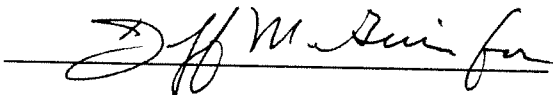
Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the _____ Board Meeting

Gary Evans, Acting Chief
Board Proceedings Division

Attachments

cc (all with attachments):

Ms. Randie L. Henry (MIC 43)
Mr. Gary Evans (MIC 80)
Mr. Robert Lambert (MIC 82)
Mr. Reed Schreiter (MIC 85)
Mr. Charles Daly (MIC 85)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Ms. Lisa Andrews (MIC 50)

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Proposed Amendments to Regulation 1586

Regulation 1586. WORKS OF ART AND MUSEUM PIECES FOR PUBLIC DISPLAY.

Reference: Sections 6365 and 6366.3, Revenue and Taxation Code.

(a) GENERAL.

(1) ORIGINAL WORK OF ART. Tangible personal property which is an original work of art and which is purchased by or for donation to certain public or nonprofit organizations for the purpose of display to the public in museums or public places is exempt from the sales and use taxes under certain conditions.

(2) MUSEUM PIECES. Tangible personal property purchased by certain organizations to replace museum pieces which were destroyed by a calamity are exempt from the sales and use taxes under certain conditions.

(b) DEFINITIONS.

(1) "Original Work of Art" for purposes of this regulation means tangible personal property which has been created as a unique object intended to provide aesthetic pleasure to the beholder and/or to express the emotions of the artist. The form in which an original work of art is presented includes but is not limited to:

(A) visual art, e.g., a drawing, painting, mural, fresco, sculpture, mosaic, film, or photograph, a work of calligraphy, a work of graphic art (an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature),

(B) crafts, e.g., crafts in clay, textile, fiber, wood, metal, plastic, glass, costume, dress, clothing, personal adornment, and like materials, or

(C) mixed media, e.g., a collage, assemblage, or any combination of the foregoing art media.

(2) "Museum" for purposes of this regulation means a place specifically designated for display of artifacts or objects of art which either:

(A) has a significant portion of its display space open to the public without charge during its normal operating hours;

(B) has its entire display space open to the public without charge for at least six of its normal operating hours during each month of operation; or

(C) has its entire display space open without charge to a segment of the student or adult population for educational purposes.

(c) APPLICATION OF TAX.

(1) Original Works of Art.

(A) Tax does not apply to the sale or use of original works of art which are ~~purchased by~~:

1. purchased by this state, or any city, county, city and county, or other local governmental entity in this state;

2. purchased by any nonprofit organization which operates a public museum under contract for such governmental entity;

3. purchased by any nonprofit organization qualifying for exemption from state income tax pursuant to Section 23701d of the Revenue and Taxation Code. The works of art must be purchased for display in a museum either operated by the purchaser or by another nonprofit organization which qualifies for exemption pursuant to Section 23701d. The museum in which the art is displayed must be open to the public regularly for not less than 20 hours per week and for not less than 35 weeks of the calendar year; ~~or~~

4. purchased by any person for donation to the above governmental entities or nonprofit organizations. To qualify for exemption from the tax under this subparagraph, donated works of art must be delivered by the retailer of the art directly to the donee pursuant to the instructions of the buyer-donor. Written evidence of

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Proposed Amendments to Regulation 1586

transfer of title to the works of art from the buyer-donor to the donee must be maintained by the retailer and the buyer-donor to support the exemption; or

5. operative January 1, 2007, leased from one nonprofit organization to another nonprofit organization for 35 years or more, if both lessor and lessee are nonprofit organizations as defined in subdivisions (c)(1)(A)(2) and (c)(1)(A)(3) of this regulation.

(B) The exemption provided by ~~paragraph~~subdivision (c)(1)(A) applies only to original works of art which are purchased or leased to become part of the permanent collection of any of the following:

1. a museum;
2. a nonprofit corporation which (1) has qualified for exemption from the state income tax pursuant to Revenue and Taxation Code Section 23701d, (2) regularly loans not less than 85 percent of the value of its collection of works of art to one or more museums, and (3) is required by its articles of incorporation to loan its works of art and is otherwise prohibited by its articles from making any private use of its works of art. The works of art for which the exemption is claimed pursuant to this subparagraph must be placed on display at a museum in California for not less than 24 months during the three-year period commencing from the date of purchase; or

3. ~~Operative January 1, 1988, this state and any city, county, city and county, or other local governmental entity in this state for display to the public in buildings, parks, plazas, or other places which are open to the public without charge for not less than 20 hours per week and for not less than 35 weeks of the calendar year.~~

Operative January 1, 2007, "permanent collection" as it applies to leases of original works of art, means a collection with a lease term of 35 years or more.

(2) Museum Pieces.

(A) Tangible personal property is exempt from the sales and use tax if purchased to replace destroyed objects of a museum's permanent collection when such property is purchased by:

1. a nonprofit museum regularly open to the public and operated by or for a local or state government entity,
2. a nonprofit museum regularly open to the public and operated by a nonprofit organization which has qualified for exemption from the state income tax pursuant to ~~§~~section 27301d of the Revenue and Taxation Code, or
3. operative January 1, 1988, this state or any local governmental entity in this state as part of a public art collection for display in a space which is open to the public without charge.

(B) To qualify for the exemption, the property must be purchased and used exclusively for display purposes. However, the property purchased does not need to be similar in character to the property it is replacing. The exemption does not extend to display cases, shelving, lamps, lighting fixtures, or other items of tangible personal property utilized in the operations of the museum. The purchased property must be:

1. purchased to replace property which has been physically destroyed by fire, flood, earthquake, or other calamity,
2. purchased within three years from the date of the calamity, and
3. the aggregate amount of property purchased must not exceed the value of the property destroyed on the date the calamity occurred.

(d) RECORDS. Records must be maintained to substantiate any claim of exemption pursuant to this regulation. Such records must include, but are not limited to, documents indicating the name of the purchaser, the date of purchase, the purchase price, the date the property was first brought into this state (if applicable), and the dates and locations the work of art was on display at a museum.

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